IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.4011 OF 2006

Mahadev Ammnna Gawade .. ..Applicant

Versus

The State of Maharashtra .. ..Respondent

Mr.Kuldeep S.Patil for applicant

Mr.P.A. Pol, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 20TH NOVEMBER, 2006

P.C.:

1. The applicant is the original accused no.4 in C.R.No.95 of 2006 which is registered with Miraj Rural Police Station alleging offences punishable under Sections 302, 143, 146, 147, 148, 149 of I.P.C.

2. The FIR was lodged by one Subhash Ramchandra Koli. He is the neighbour of the deceased. The premises of Balu Gawade were closed for quite some time. Some roof tiles were displaced. The complainant along with police party

entered the house and found that Balu Gawade and his five family members were lying dead. A FIR was lodged against some unknown persons. It appears that investigation commenced and the accused came to be arrested.

3. The charge-sheet is filed after the investigations were completed. The applicant before me and his wife applied for bail but the learned Addl. Sessions Judge granted bail to the wife of the applicant and denied the relief to the applicant. That is how the present application is filed in this court.

4. Shri Patil in support of this application submits that the two families are Gawade families. There may be branches within this larger family, but the applicant is residing and serving at Pune. At the relevant time he visited the village in connection with some religious ceremony, but met with an accident and was hospitalised. Upon discharge from the hospital, he was taken to home. The family members gathered to meet him. At his instance, the rival faction (deceased family) was invited for a cup of tea.

5. Mr.Patil submits that assuming that the applicant

and the other branch were on enimical terms, yet, as far as the entire incident is concerned, the applicant has not taken any part in the same. He was hospitalised and discharged and latter on brought home and that very day the incident took place.

6. My attention is invited by Shri Pol to the observations of the learned trial judge on page nos.59 and 60 (paras 7 and 9 of the trial court order).

7. The learned APP states that the offence alleged is serious. It is a case of circumstantial evidence. The circumstances brought on record clearly establish the link and the finger points to all the accused including the present applicant. Therefore, this is not a stage for releasing the applicant. More so, when witnesses and other family members residing in the village apprehend danger to their life.

8. From a perusal of the application and annexures thereto, so also the order of the trial court, it is not disputed that the applicant was hospitalised. It is further not disputed that he was discharged from the hospital and when he came home the very day the incident

took place. All that is alleged is at his residence both factions gathered and were offered tea. However, in the act of mixing of poison with tea so also the subsequent assault the applicant has not been named. From the observations of the learned trial judge, it is prima facie clear that the applicant has been named as a conspirator. The applicant is serving in Pune and is residing permanently there. He has undertaken not to enter Sangli District till the conclusion of the trial.

9. For the above reasons, case is made out and the applicant deserves to be enlarged on bail. Hence, the following order :

O R D E R :

(i) The applicant arrested in connection with C.R.No.95/2006 registered with Miraj Rural Police Station shall be enlarged on bail in the sum of Rs.15,000/= with one or two local sureties in the like amount.

(ii) The applicant shall not enter the limits

of Sangli District till the conclusion of the Trial. He is however permitted to enter the limits of Sangli District only for the purpose of attending trial on relevant dates.

(iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating Officer. The applicant shall report to a Police Station nearest to his residence once a week till the conclusion of trial.

(iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

(v) The applicant shall cooperate with the

learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(viii) Parties to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J.)